judgment, whether there should be only one general question or several sub-questions is best left to the discretion of the learned trial judge after having regard to the facts of each particular case, the evidence adduced before the Court and the conduct of the defence. However, the most important thing to bear in mind is that the question or questions framed by the trial Court should be simple, clear and unambiguous. They must be easily understood by the assessors so that they can give their opinions without difficulty. There may well be cases where several sub-questions should be posed where provocation has been put forward by the defence but in our opinion, this was not one of them. In the context of this case, we are of the opinion that the learned trial judge was right in putting only one general question for the opinion of the assessors. This ground of appeal also failed.

Lastly, learned counsel for the appellant submitted that the learned trial judge erred in law by saying in his summing-up to the assessors these words:

"In this trial, I am the sole judge of the law and you (assessors) are the sole judges of fact."

It was argued that assessors are not jury and that their opinions are not binding on the learned trial judge (section 198 of C.P.C.). As such, it was contended that the assessors cannot be regarded as "sole" judges of fact. In fact, they cannot even be regarded as "judges of fact", as they have no power to give a verdict of "guilty" or "not guilty". It was submitted that their function is merely to "advise" the Court "on such particular issues of fact relevant to the charge as the Court may specify" (section 197) and the learned trial judge is free to reject such advice.

For the Public Prosecutor, the learned Senior Federal Counsel had submitted that under sections 197 and 198 the assessors in a murder trial are judges of fact. In our opinion, when the learned trial judge said to the assessors in his summing-up that "In this trial, I am the sole judge of the law and you (assessors) are the sole judges of the fact . . . . . " he was merely describing the division of functions between a judge and assessors in a murder trial conducted under Chapter XXI of the Criminal Procedure Code (F.M.S. Cap. 6). Although the law allows the learned trial judge to disagree with what he regards as perverse the opinion of an assessor subject to his giving reason or reasons thereof, learned counsel for the appellant was unable to point out any passage or passages in the summing-up that the learned trial judge had usurped or attempted to usurp the function which is in the province of the assessors to determine. In our judgment, the fact that the learned trial judge is not bound to conform to the opinions of the assessors or either of them, does not, derogate from the assessors their main function as arbiter of fact in a murder trial. From the very name "assessors" itself they are free to give their opinion on any particular issue of fact relevant to the charge which the learned judge may specify at the trial. In our opinion, the use of the phrase to describe the assessors as "sole judges of fact" instead of "judges of fact" constituted only a minor error which had not occasioned a failure of justice. This ground of appeal also failed.

We have read with care the record of appeal and the summing-up of the learned trial judge and we are satisfied that the learned trial judge was right to concur with the unanimous opinions of the assessors that the defence had failed to bring his case within the special exceptions, viz. grave and sudden provocation (Exception No. 1) and/or sudden fight (Exception No. 4) to section 300 of the Penal Code.

For the above reasons we hold that none of the submissions advanced by learned counsel for the appellant for quashing the conviction are tenable. The appeal against conviction is accordingly dismissed.

Appeal dismissed.

MALAYAN BANKING BERHAD v. LIM CHEE LENG & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah F.JJ.) October 29 & 30, 1984]
[Kuala Lumpur – Federal Court Civil Appeal No. 118 of 1984]

Banking – Trust Receipt – Liability of partners of firm – Payment of interest.

Partnership – Liability of partners – Partner retiring from firm – Partnership Act 1961, s. 19(2).

In this case the respondents were the partners of a firm called Berjasa Corporation. The appellants sued the respondents under the Trust Receipt which matured and became payable on June 14, 1975. The first and fourth

respondents resigned from the firm on August 26, 1976. The second respondent claimed he was no longer associated with the firm. The appellants applied for summary judgment but this was refused by the Senior Assistant Registrar. On appeal the learned Judge of the High Court allowed the appeal. He gave judgment for the appellants in the sum of $27,245.82. However he rejected the claim for interest and penalised the plaintiffs – appellants with costs. The appellants appealed against the refusal to grant them interest and the respondents cross-appealed on the ground that there were triable issues and that the learned Judge should not have entered summary judgment.

Held: (1) the respondents incurred the debt on the trust receipt before their resignations or retirement and they cannot escape liability by merely pleading resignation or retirement. The learned Judge was therefore correct in giving summary judgment for the appellants;

(2) the learned Judge was wrong in denying the appellants the right of interest and in penalising the appellants with costs. The appeal of the appellants must be allowed with costs.

FEDERAL COURT.

H. Y. Too for the appellants.
C. F. Chin for the 1st respondent.
K. Siva Segara for the 2nd respondent.
C. Lee (L. G. Oliveiro with him) for the 4th respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): The plaintiffs/appellants appealed against the learned Judge's refusal to grant them interest while the defendants/respondents cross-appealed on the ground that there were triable issues and that the learned Judge should not have entered judgment summarily against them. The facts have been set out in full by the learned Judge and we do not have to repeat them here.

Briefly, the plaintiffs sued the four defendants who were partners of a firm called Berjasa Corporation for $48,562.32 under a Trust Receipt which matured and became payable on June 14, 1975. The plaintiffs alleged that they had issued notice of demand but the defendants failed to pay. Judgment was obtained against the 3rd defendant in default of appearance. The 1st defendant resigned on August 26, 1976. The 4th defendant also resigned on August 26, 1976. The 2nd defendant claimed he was no longer associated with the firm when the plaintiffs demanded payment by letters dated March 26, 1977 and May 27, 1981 as set out in paragraph 6 of the Statement of Claim

By a Summons-in-Chambers dated December 20, 1981 the plaintiffs applied for final judgment. It must be pointed out that the Trust Receipt matured and became payable on June 14, 1975, long before the 1st and 4th defendants resigned and also before the 2nd defendant claimed he was no longer associated with the firm. On November 25, 1982 the Senior Assistant Registrar dismissed the plaintiffs' application for summary judgment. The plaintiffs appealed. The learned Judge allowed the appeal. He gave judgment for the plaintiffs in the sum of $27,245.82. However, he rejected the claim for interest in the sum of $21,316.50. He also penalised the plaintiffs with costs.

The learned Judge was perfectly right to refer to section 19(2) of the Partnership Act which states in no uncertain terms that:–

> "A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement."

The defendants incurred the debt on the Trust Receipt before their resignation or retirement. The debt was also due before their resignation or retirement. They cannot escape liability by merely pleading resignation or retirement.

The learned Judge considered that the sum of $48,562.32 was payable by the defendants to the plaintiffs as evidenced by the Trust Receipt and the Statement of Accounts and payments made by the defendants towards the discharge of their debt.

We are, however, unable to agree with the learned Judge when he said that the plaintiffs had failed to serve the defendants with the notice of demand for which, therefore, the plaintiffs should be denied the right of interest.

The Trust Receipt matured and became due on June 14, 1975. No notice was necessary. The writ itself is a notice. We also consider that the learned Judge exercised his discretion wrongly by penalising the plaintiffs with costs simply on the ground that plaintiffs brought the action almost six years after it arose. The plaintiffs won the appeal and they should be given costs. The fact that they brought the action almost six years after it arose should not be a ground for exercising discretion

against them. They brought the action within the period allowed by law. As the learned Judge at page 118 stated:—

"The plea of limitation, however, had really no merit because, although the payment by the defendants was due on the 14th of June it was only made on the 12th of November 1975. But the writ was filed on the 10th of June 1981, within the six-year period."

Having found that the plaintiffs filed their claim within the limitation period — a period allowed by law — we cannot see why they should be penalised with costs.

As regards interest, the defendants contended no rate was agreed. At the bottom of the Trust Receipt under Particulars of Drafts, it is clearly stated as follows:—

"interest chargeable as from 7/2/75."

The interest chargeable is the usual rate the particular bank would charge on Trust Receipt Account. It would of course have been better if the rate was stated. But, the defendants cannot say that they were not liable to pay interest merely because no rate was specified. The Trust Receipt clearly specified that interest was chargeable from February 7, 1975.

We allowed the appeal with costs here and the Court below.

Deposit to be refunded to the appellants.

Cross appeal dismissed with costs.

Appeal allowed; Cross-appeal dismissed.

Solicitors: *Shook Lin & Bok; Chin & Co.; Siva Segara & Co.; Nik Saghir Yaacob & Ismail.*

AU KING CHOR & ORS. v. PUBLIC PROSECUTOR

[F.C. (Abdul Hamid Ag. L.P., Mohamed Azmi & Syed Agil Barakbah F.JJ.) October 15 & November 14, 1984]
[Kuala Lumpur — Federal Court Criminal Applications Nos. 17 and 18 of 1984]

Criminal Law and Procedure — Application for leave to appeal from orders made by High Court — Admissibility of documents — Orders do not involve question of public interest.

Evidence — Admissibility of documents — Maker not called to give evidence — Evidence Act 1950, s. 32 — Courts of Judicature Act, 1964, s. 50 (3A) (i).

In this case the applicants were tried on charges under the Dangerous Drugs Act, 1952. In the course of the trial the learned Judge admitted two prosecution exhibits, the former a record of payment made by credit card in settlement of dues from the hotel guests in satisfaction for services rendered by the hotel, a copy of which belonged to and was kept by the hotel in its normal course of business, and the latter the guests's registration card, the property of the hotel, required under the Thai Law to be filled by guests upon checking into the hotel. These were the documents referred to in Criminal Application No. 17 of 1984. In Criminal Application No. 18 of 1984, the application arose as a result of the learned Judge's order admitting documents apparently prepared by the hotel employees and kept by the hotel in accordance with Thai Law. In Criminal Application No. 17/84 the applicants asked for leave to be granted for the determination by the court of the following question of law of public interest pursuant to section 50(3A)(i) of the Courts of Judicature Act:- "Whether the learned trial judge in admitting documentary evidence under section 32 of the Evidence Act, 1950, was right in having done so without holding a proper inquiry or trial within a trial to determine their admissibility."

In Criminal Application No. 18/84 they asked for leave that the following question of law of public interest be determined — "Whether the learned trial judge was right in admitting the documentary evidence made either wholly or in part by the accused without its makers being called to tender and produce them".

The applications did not originally comply with the requirements of section 50(3A)(i) of the Courts of Judicature Act, but leave was given to amend the applications.

Held: (1) that before the Federal Court grants leave to appeal under section 50(3A)(i) of the Courts of Judicature Act against an order made by the High Court the Court has to be satisfied that there has arisen from such order a question of law of public interest which would either affect or has affected the course of the trial;

(2) leave should be given only in exceptional cases. The Court should be very slow to exercise its discretion to grant leave to a party to appeal against an order made by the High Court in the exercise of its original criminal jurisdiction. In considering whether the Court should exercise its discretion, it must be satisfied that it is not